Supreme Court, U.S.
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No. 96-1432

In The

Supreme Court of the United States

October Term, 1996

YOURDON, INC.,

Petitioner,

vs.

SUSAN Q. BRIDGES, VIRGINIA D'APONTE and KIMBERLY MURYASZ,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITIONER'S REPLY BRIEF

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PARTIES TO THE PROCEEDING, PARENT COMPANIES AND NONWHOLLY OWNED SUBSIDIARIES

Pursuant to Rule 29.6 of this Court's rules, petitioner Yourdon, Inc. submitted a statement of parties, parent companies and nonwholly owned subsidiaries on page ii of its petition for certiorari, filed with the Court on March 10, 1997.

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A PLAINTIFF'S RECOVERY UNDER THE NEW YORK HUMAN RIGHTS LAW IS IRRELEVANT FOR PURPOSES OF TITLE VII FEE-SHIFTING

It is well established that plaintiffs are not entitled to attorneys' fees under the New York Human Rights Law. As this Court has noted, "[t]he Human Rights Law of the State of New York does not authorize an award of counsel fees for work done in either state administrative or **judicial** proceedings." *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 67, n.7 (1980) (emphasis added).

The cases cited by respondents are distinguishable. Not one of them holds that a plaintiff may recover attorneys' fees under Title VII for a financial recovery soley under a claim premised upon the New York Human Rights Law. Respondents' interpretation of *New York Gaslight Club, Inc. v. Carey*, *supra*, 447 U.S. 54, is overly expansive. There, this Court determined that the plaintiff could recover attorneys' fees for work performed in state **administrative** proceedings that federal law **required** the plaintiff to pursue before bringing a federal claim. *See Webb v. Dyer County Bd. of Educ.*, 471 U.S. 234, 241 (1985) (distinguishing the situation where a statute stands as an independent avenue of relief from the one addressed in *New York Gaslight Club* where Title VII "**required**" a plaintiff to pursue administrative remedies before bringing suit) (emphasis added). *See also Gerena-Valentin v. Koch*, 739 F.2d 755, 761 (2d Cir. 1984) (referencing the holding in *New York Gaslight Club* thus: "attorney's fees awarded under 42 U.S.C. § 2000e-5(k) for time spent in certain **administrative** proceedings **necessary** to the litigation," and affirming denial of fees for time spent in "preclearance review" because it was not necessary to litigation) (emphasis added); *Reichman v. Bonsignore, Brignati & Mazzotta*, 818 F.2d 278, 283 (2d Cir. 1987) ("we conclude Congress intended a fee award under the ADEA to cover time spent on administrative proceedings that were a **prerequisite** to the [federal] action") (emphasis added). Yourdon has never disputed that rule.

However, because a pendent state claim is not a prerequisite for a federal action under Title VII, recovering on such a state claim alone[1] simply does not entitle Bridges to attorneys' fees.

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[1] The district court's judgment provides that Bridges "makes no financial recovery under [Title VII]." (A-42). Moreover, the district court expressly held that "Bridges cannot recover money damages on her Title VII claims." (A-12).

As respondents attempt in the present action, the plaintiff in *Webb v. Dyer County Bd. of Educ.*, 471 U.S. 234 (1985) attempted to expand the scope of the *Hensley v. Eckerhart* decision by arguing that *Hensley* required fees for work done that is reasonably related to the enforcement of federal civil rights. This Court rejected such an overly expansive interpretation ruling: "[t]he Court's opinion in *Hensley* does not sweep so broadly." Id. at 242.

CONCLUSION

For these reasons and for the reasons stated in the petition, a writ of certiorari should issue to review the order of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

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